

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 REBECCA M. HEINSTEIN, State Bar No. 173202
Deputy Attorney General
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
5 Telephone: (415) 703-5604
Facsimile: (415) 703-5480

6 Attorneys for Complainant

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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. *2009-255*

13 **KIMBERLY LYNNE FAIRES**

2250 24TH Street, Unit #122

14 San Francisco, CA 94107

A C C U S A T I O N

15 Registered Nurse License No. 549177

Respondent.

16 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

17 **PARTIES**

18 1. Complainant brings this Accusation solely in her official capacity as the
19 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer
20 Affairs.

21 2. On or about October 26, 1998, the Board issued Registered Nurse License
22 Number 549177 to Kimberly Lynne Faires ("Respondent"). The Registered Nurse License was
23 in full force and effect at all times relevant to the charges brought herein and will expire on
24 November 30, 2010, unless renewed.

25 **JURISDICTION**

26 3. Section 2750 of the Business and Professions Code ("Code") provides, in
27 pertinent part, that the Board may discipline any licensee, including a licensee holding a
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temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 118, subdivision (b), provides, in pertinent part, that the suspension, expiration or forfeiture by operation of law of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

6. Section 2761 of the Code states:

“The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

“(a) Unprofessional conduct, which includes, but is not limited to, the following:

“(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

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7. Code section 2762 states, in pertinent part that, in addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

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2 (e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible
3 entries in any hospital, patient, or other record pertaining to the substances described in
4 subdivision (a) of this section.

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6 8. California Code of Regulations, title 16, section 1442, states:

7 "As used in Section 2761 of the code, 'gross negligence' includes an extreme
8 departure from the standard of care which, under similar circumstances, would have ordinarily
9 been exercised by a competent registered nurse. Such an extreme departure means the repeated
10 failure to provide nursing care as required or failure to provide care or to exercise ordinary
11 precaution in a single situation which the nurse knew, or should have known, could have
12 jeopardized the client's health or life."

13 9. Section 4060 of the Code states, in pertinent part, that no person shall
14 possess any controlled substance, except that furnished to a person upon the prescription of a
15 physician, dentist, podiatrist, or veterinarian, or furnished pursuant to a drug order issued by a
16 certified nurse-midwife pursuant to Section 2746.51, a nurse practitioner pursuant to Section
17 2836.1, or a physician assistant pursuant to Section 3502.1.

18 10. Section 11173(a) of the Health and Safety Code states that "[n]o person
19 shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the
20 administration of or prescription for controlled substances, (1) by fraud, deceit,
21 misrepresentation, or subterfuge; or (2) by the concealment of a material fact."

22 11. Code section 125.3 provides, in pertinent part, that the Board may request
23 the administrative law judge to direct a licensee found to have committed a violation or
24 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
25 and enforcement of the case.

26 **CONTROLLED SUBSTANCE**

27 12. "Morphine/Morphine Sulfate" is a Schedule II controlled substance as
28 designated by Health and Safety Code section 11055(b)(1)(M).

1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Falsify Patient and/or Hospital Records)**

3 13. Respondent is subject to disciplinary action under section 2761(a) of the
4 Code, on the grounds of unprofessional conduct, as defined by section 2762(e) of the Code, in
5 that between the approximate period of October 26, 2004 and November 27, 2004, while on duty
6 as a registered nurse at Novato Community Hospital in Novato, California (NCH), she falsified,
7 made grossly incorrect, grossly inconsistent, or unintelligible entries in hospital and/or patient
8 records in the following respects:

9 **Patient A-1**

10 a. On or about November 17, 2004, at 01:18 hours, Respondent withdrew 10
11 mg. of Morphine from the Pyxis for this patient. Respondent charted that she administered 4 mg.
12 Morphine at 01:43 hours. The patient was discharged at 03:00 hours. Respondent charted that
13 she wasted 7 mg. Morphine at 03:56 hours, fifty-six (56) minutes after the patient was
14 discharged.

15 **Patient B-2**

16 b. On or about November 17, 2004, Respondent withdrew a total of 20 mg.
17 of Morphine for this patient; however, the physician's order was for 4 mg. Morphine.
18 Respondent charted that she administered 11 mg. Morphine, but failed to account for the
19 remaining 9 mg. of Morphine.

20 **Patient C-3**

21 c. On or about November 23, 2004, at 00:18 hours, Respondent withdrew 10
22 mg. of Morphine for this patient; however, there was no physician's order for Morphine for this
23 patient. Respondent charted that she administered 2 mg. Morphine, but failed to account for the
24 remaining 8 mg. of Morphine.

25 **Patient D-4**

26 d. On or about November 27, 2004, at 04:53 hours, Respondent withdrew 10
27 mg. of Morphine for this patient. Respondent charted that she administered a total of 8 mg.
28 Morphine, but failed to account for the remaining 2 mg. of Morphine.

1 **Patient E-5**

2 e. On or about October 26, 2004, Respondent withdrew a total of 24 mg.
3 Morphine for this patient. Respondent charted that she administered a total of 8 mg. Morphine,
4 but failed to account for the remaining 16 mg. of Morphine.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Gross Negligence)**

7 14. Respondent is subject to disciplinary action under section 2761(a)(1) of
8 the Code, on the grounds of unprofessional conduct, in that between the approximate period of
9 October 26, 2004 and November 27, 2004, while on duty as a registered nurse at NCH,
10 Respondent was guilty of gross negligence, within the meaning of Title 16, California Code of
11 Regulations section 1442, as set forth in paragraph 13, above.

12 **THIRD CAUSE FOR DISCIPLINE**

13 **(Gross Negligence)**

14 15. Respondent is subject to disciplinary action under section 2761(a)(1) of
15 the Code, on the grounds of unprofessional conduct, in that on or about November 23, 2004,
16 while on duty as a registered nurse at NCH, Respondent was guilty of gross negligence, within
17 the meaning of Title 16, California Code of Regulations section 1442, in that she administered
18 Morphine to Patient C-3, without a physician's order, as set forth in paragraph 13c, above.

19 **FOURTH CAUSE FOR DISCIPLINE**

20 **(Obtaining and Possessing a Controlled Substance)**

21 16. Respondent is subject to disciplinary action under section 2671(a) of the
22 Code, on the grounds of unprofessional conduct, as defined by section 2762(a) of the Code, in
23 that between the approximate period of October 26, 2004 and November 27, 2004, while on duty
24 as a registered nurse at NCH , Respondent did the following:

25 a. Respondent obtained Morphine, a controlled substance, by fraud, deceit,
26 misrepresentation, subterfuge, or by concealment of a material fact in violation of section
27 11173(a) of the Health and Safety Code, by taking Morphine from hospital supplies, as set forth
28 in paragraph 13, above.

1 b. Respondent possessed Morphine, a controlled substance, in violation of
2 section 4060 of the Code.

3 **PRAYER**


4 WHEREFORE, Complainant requests that a hearing be held on the matters herein
5 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

6 1. Revoking or suspending Registered Nurse License Number 549177, issued
7 to Kimberly Lynne Faires;

8 2. Ordering Kimberly Lynne Faires to pay the Board of Registered Nursing
9 the reasonable costs of the investigation and enforcement of this case, pursuant to Code section
10 125.3;

11 3. Taking such other and further action as deemed necessary and proper.

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13 DATED: 4/17/09

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RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant
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